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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE R. LOERA,

Defendant and Appellant.

B198946

(Los Angeles County
Super. Ct. No. KA069892)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Tia Fisher, Judge. Affirmed.

Doris M. Frizzell, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Stephanie A. Miyoshi and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Joe Loera was convicted, following a jury trial, of one count of second degree murder in violation of Penal Code¹ section 187, subdivision (a). The jury found true the allegation that he personally used a knife in the commission of the murder within the meaning of section 12022, subdivision (b)(1). The trial court found true the allegations that appellant had suffered one prior serious felony conviction within the meaning of section 667, subdivision (2), two prior convictions within the meaning of sections 667, subdivisions (b) through (i) and 1170.12 (the "Three Strikes" law) and served a prior prison term within the meaning of section 667.5, subdivision (b). The court sentenced appellant to a term of 15 years to life in state prison, doubled to 30 years to life pursuant to the Three Strikes law, plus a five-year enhancement term pursuant to section 667, subdivision (a) and a one-year term pursuant to section 667.5.²

Appellant appeals from the judgment of conviction, contending that there is insufficient evidence to support the finding that he was competent to stand trial. We affirm the judgment of conviction.

Facts

On February 23, 2005, Oscar Serrano lived in a house owned by Teresa Rodriguez in Baldwin Park. He shared a room in the house with Rudy Rodriguez, Teresa's son. Teresa lived in the house as well.

Appellant, who described himself as Rudy's cousin, often visited Rudy. The two men smoked rock cocaine together in a garage behind Teresa's house. Appellant and Rudy were in the garage together the night of February 23. Oscar saw the two men there about 2:45 a.m.

¹ Any further statutory references are to the Penal Code unless otherwise indicated.

² The court struck one of the prior strike convictions and the prior prison term allegation.

About 5:00 a.m., Oscar smelled something burning in the garage. He went there and discovered Rudy's body. Rudy had been stabbed 54 times.

DNA analysis of blood collected from the garage showed that some of the blood was appellant's. Rudy's blood was found on a knife found near a fence on the property. The knife also had appellant's blood on it.

Appellant was interviewed by police. He admitted the bloody knife was his. He also claimed that Rudy attacked him with the knife, and that they struggled and appellant defended himself. Appellant stated that Rudy "[p]robably wanted to kill me then have sex with me. He's sick." When asked, "[A]nd you did kill him, correct?" appellant replied, "I guess a yes."

Procedural History

The superior court's minute order in this matter shows that on July 13, 2005, appellant's counsel declared a doubt as to appellant's competence pursuant to Penal Code section 1368.³ The court sent appellant to Department 95 for an evaluation. According to pleadings filed by appellant's trial counsel, three doctors examined appellant. He was found competent to stand trial on September 6, 2005. Two of the doctors submitted reports to the court indicating that appellant was "manipulating" or "faking all symptoms." One of the doctors was Dr. Kaushal Sharma.

On September 14, 2005, appellant's counsel filed a Request to Appoint an Expert to assist her in evaluating appellant's mental health records and determining whether appellant could plead not guilty by reason of insanity or assert any other mental defenses. Ultimately, Dr. Jack Rothberg was appointed to assist the defense. Dr. Rothberg provided a report to appellant's trial counsel on January 25, 2006. The next day, based on Dr. Rothberg's report, appellant's counsel declared a doubt as to appellant's competency to stand trial.

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On our own motion, we take judicial notice of the superior court's file.

The court directed the prosecutor to select an additional doctor to evaluate appellant. The prosecutor selected Dr. Sharma. Dr. Sharma found appellant competent. The court then directed the prosecutor and appellant's counsel to jointly select a third doctor. They agreed on Dr. Marshall Cherkas. Dr. Cherkas found appellant incompetent.

On July 19, 2006, the trial court found appellant competent to stand trial. The evidence in the case consisted of the reports of Drs. Rothberg, Sharma, and Cherkas.

Discussion

Appellant contends that there is insufficient evidence to support the trial court's July 19 finding that he was competent to stand trial within the meaning of section 1368. We see substantial evidence to support the court's finding.

A defendant is mentally incompetent to stand trial when he suffers a mental disorder or developmental disability rendering him "unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (§ 1367, subd. (a).) "A defendant is presumed competent unless the contrary is proven by a preponderance of the evidence." (*People v. Lawley* (2002) 27 Cal.4th 102, 131.)

When a trial court is faced with two opposite and conflicting evaluations of a defendant's competency, "the trial court properly could assess the weight and persuasiveness of those findings and conclusions" and pick whichever one was more persuasive. (*People v. Lawley, supra*, 27 Cal.4th at p. 132.)

A "reviewing court determines whether substantial evidence, viewed in the light most favorable to the verdict, supports the trial court's finding. [Citation.] 'Evidence is substantial if it is reasonable, credible and of solid value.' [Citation.]" (*People v. Lawley, supra*, 27 Cal.4th at p. 131.)

Here, Dr. Sharma found appellant competent to stand trial. Appellant contends that Dr. Sharma's report does not constitute substantial evidence to support the trial court's finding because it is nearly devoid of supporting facts and suggests that his examination of appellant was merely cursory. Appellant also contends that Dr. Sharma's

conclusion is at odds with appellant's long-term history of mental illness. We do not agree.

We see nothing to suggest that Dr. Sharma's efforts were cursory. The nature of Dr. Sharma's observations naturally resulted in a more succinct report. For example, it only takes a few words to report that a patient did not demonstrate hallucinations or delusions. As Dr. Rothberg's report shows, describing and evaluating a patient's claims of hallucinations is a more lengthy process. Given that Dr. Sharma had apparently interviewed appellant before, in connection with the first competency proceeding, his interaction with appellant was almost certainly the most extensive of the three doctors.

Dr. Sharma's report shows that he was aware that appellant had been hospitalized for suicidal behavior five years earlier and had received outpatient treatment at a parole clinic. It appears from Dr. Rothberg's report that appellant spent 72 hours in the hospital and that the treatment at the parole clinic consisted of medication for a year or two. Dr. Cherkas reported that appellant was "most vague about medicines, treatment, dates, etc." We see nothing about such a mental health history which renders Dr. Sharma's conclusion of competence incredible or even improbable. (See *People v. Samuel* (1981) 29 Cal.3d 489, 500 [long history of aberrant behavior can be consistent with present competence to stand trial].)

Further, data in Dr. Rothberg's report could reasonably have caused the trial court to find his conclusion of incompetency unpersuasive. Dr. Rothberg had a detailed discussion with appellant about the trial process and concluded that appellant "understands the nature and purpose of the proceedings and the roles of the participants." Thus, Dr. Rothberg found that appellant satisfied the first prong of the competency test. Dr. Rothberg also found that appellant was "not very motivated to cooperate . . . partly due to volitional factors." Dr. Rothberg also expressed some doubts about appellant's veracity, noting that appellant "describes auditory hallucinations and paranoid delusions, though I was not convinced that these were genuine, but could not rule them out either." The trial court could reasonably have found Dr. Rothberg's conclusion of incompetency unpersuasive given that appellant was able to understand the proceedings against him,

was to a degree choosing not to cooperate and may well have been faking or exaggerating symptoms.

Similarly, parts of Dr. Cherkas's report could reasonably have caused the trial court to find his conclusion of incompetency unpersuasive. Dr. Cherkas noted that appellant claimed very little memory of his life events, including any work he had done in the past. He was also "most vague" about his mental health history. This is in sharp contrast to the details which appellant provided Dr. Rothberg, and could show that appellant was less than honest with Dr. Cherkas. Further, Dr. Cherkas used the wrong legal standard in his report, stating that appellant was not competent to stand trial under *M'Naghten*.

Dr. Sharma's report is reasonable, credible and of solid value. It provides substantial evidence to support the trial court's finding that appellant was competent to stand trial.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.